

MILDRED A. POWERS

IBLA 76-708

Decided October 6, 1976

Appeal from decision of Colorado State Office, Bureau of Land Management, rejecting color of title application C-23715.

Affirmed.

1. Color or Claim of Title: Applications

A color of title claim must be based upon a document from a source other than the United States which purports to convey the land applied for.

2. Color or Claim of Title: Applications -- Color or Claim of Title: Good Faith

An application to purchase public land under the Color of Title Act is properly rejected where the applicant shows that she has held the land for less than 20 years under a conveyance from a grantor who occupied the land for a period which, if added to her possession, would total more than 20 years, but fails to show that the grantor had any reason to believe that he had title to the land other than merely by alleged adverse possession, since mere possession of public land alone cannot be considered as constituting a holding of land under a claim or color of title in good faith as contemplated and required by the Color of Title Act.

Appearances: Joseph H. Fonfara, Esq., of Fischer and Wilmarty, Attorneys-at-Law, Fort Collins, Colorado.

## OPINION BY ADMINISTRATIVE JUDGE RITVO

Mildred A. Powers has appealed from a decision, dated June 28, 1976, of the Colorado State Office, Bureau of Land Management, rejecting her application to purchase 6.89 acres of public land in sec. 30, T. 9 N., R. 68 W., 6th PM, Colorado, pursuant to the Color of Title Act, 43 U.S.C. § 1068 (1970).

The application was filed as a Class 1 claim under the Act. A Class 1 claim is allowable only where it is shown to the satisfaction of the Secretary of the Interior:

\* \* \* that a tract of public land has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part has been reduced to cultivation \* \* \*.

The claim of Mrs. Powers originated in a quitclaim deed issued on December 30, 1966, by her former husband, Gale A. Powers, pursuant to an Order of Distribution of property issued by the District Court of Larimer County, Colorado, on December 9, 1966, simultaneously with a decree of divorce. Gale Powers' interest in the land stems from his father, Ira E. Powers. Appellant alleges, and two affidavits submitted with the appeal state, that Ira E. Powers moved on the land in the late 1920's or early 1930's. He built a home on it, fenced it, farmed it, and maintained livestock and chickens upon it. There is nothing in the public land records to show that Ira Powers ever filed any application for the land. 1/ Ira Powers paid taxes on the land at least from 1951 through 1960. He died in 1961.

Appellant alleges that sometime prior to his death Ira made an oral conveyance of this parcel to Gale A. Powers and that during their marriage she and Gale Powers moved upon the land and reared their family there. On July 10, 1975, Mrs. Powers discovered that she did not have clear title to the land.

The State Office rejected Mrs. Powers' application because she could not show a claim of title evidenced by a document more than 20 years old.

Appellant contends that there is no warrant for such a requirement. She asserts that while a color of title requires a paper title, a claim of title does not require any document

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1/ The appellant's brief says that Gale A. Powers has stated that his father filed on the land in the early thirties, but the filing was not recorded and the receipt for the filing was lost.

but can be founded upon adverse possession. Further, she urges that United States v. Wharton, 514 F.2d 406 (9th Cir. 1975), supports her contention that a document is not necessary to support a color of title application. Finally she argues that even if a document is necessary, the court decree and quitclaim deed are such documents and that they need not be 20 years old.

[1] The Board has recently repeated its well established rule that a color or claim of title must be based upon a document from a source other than the United States which on its face, purports to convey the land applied for. Estate of James J. Lee, 26 IBLA 102 (1976); Cloyd and Velma Mitchell, 22 IBLA 299 (1975). James E. Smith, 13 IBLA 206, 80 I.D. 702 (1973), Minnie Wharton, 4 IBLA 207, 79 I.D. 6 (1972), reversed on other grounds 514 F.2d 406 (9th Cir. 1975). As the Board pointed out in Lee, supra, the 9th Circuit in Wharton, supra, approved the Board's interpretation of the Color of Title Act. Although the court emphasized that a color of title claim would not be based upon possession of public lands by one who knows the title is in the United States because such possession negates the "good faith" required by the Act, it did not criticize the Board's holding that a document was necessary. Thus, since appellant's documentary evidence of her color of title originated in December 1966, she falls far short of the 20 years required by the Act.

[2] However, even if something other than a document could be considered sufficient to initiate a claim under the Act, the appellant must still show 20 years of qualifying occupancy by her ancestors or grantors. As the Department held in a case almost identical to this one:

An application to purchase public land under the Color of Title Act is properly rejected where the applicant shows that he has held the land for less than 20 years under a conveyance from grantors who occupied the land for a period which, if added to his alleged possession, would total more than 20 years, but fails to show that the grantors had any reason to believe that they had title to the land other than merely by their alleged adverse possession, since mere possession of public land alone cannot be considered as constituting a holding of land under a claim or color of title in good faith as contemplated and required by the Color of Title Act. [Syllabus.]

Thomas Ormachea, A-30092 (May 8, 1964) 2/

2/ The facts in Ormachea are stated as follows:

" \* \* \* Prior to 1919 R. J. Lofthouse and F. F. Franke settled upon the land, constructed certain improvements, fenced, irrigated,

In Day v. Hickel, 481 F.2d 473, 477 (9th Cir. 1973), the Court upheld the Department's holding that possession by one who knows title is in the United States does not constitute a claim of title which is sufficient under the Act.

Since there is no evidence that Ira Powers had any reason to believe he had title, and should have known the land he occupied belonged to the United States, appellant cannot avail herself of the years of occupancy by Ira to satisfy the 20-year requirement.

If Ira's adverse possession continued until his death in 1961, the 20-year requirement cannot be met.

The only possible alternative is the assertion that Ira made an oral conveyance to Gale. We are not aware of any authority for basing a color of title claim on an oral conveyance. But even assuming (but not conceding), that there is no other objection to such a conveyance as furnishing a basis for a color of title claim, there is a complete absence of any evidence to support the contention. There is no affidavit from Gale; the affidavits submitted do not refer to it; the tax records show that Ira himself paid the local property taxes. The record supports only the conclusion that Ira's occupancy continued until his death in 1961. It follows that there cannot have been 20 years of qualifying occupancy which appellant could use to support her claim. Accordingly her application was properly denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Colorado State Office is affirmed.

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Martin Ritvo  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Newton Frishberg  
Administrative Judge

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fn. 2 (continued)

and cultivated a certain part of it. They paid taxes for the land continuously from 1919 to 1938 and occupied the land until then. By a deed dated December 6, 1938, they conveyed 'all their right, title and interest in and to' the described land, which is designated in the deed as a 'Possessory Claim,' to Ormachea who has occupied the land ever since except for a period of time in the 1940's when the land was withdrawn for use by the United States Navy as a bombing range."

